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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Taylorville, Illinois)

MM Docket No. 93-256
RM-8326

TO: Chief, Allocations Branch

OPPOSITION TO PETITION FOR RECONSIDERATION

Miller Communications, Inc. ("Miller"), licensee of WTIM(AM), Taylorville, Illinois, by counsel and pursuant to Section 1.45 of the Commission's Rules, hereby respectfully opposes the Petition for Reconsideration ("Petition") filed by Lakeside Broadcasting, Inc. ("Lakeside") in the above-captioned proceeding.^{1/} In support of this Opposition, the following is respectfully shown:

1. Miller is the petitioner which initiated the rule making proceeding culminating in the Commission's amendment to Section 73.202(b), Table of Allotments, FM Stations, allotting Channel 232A to Taylorville, Illinois. Report & Order, 9 FCC Rcd 505 (1994) ("Report & Order"). The Commission's Report & Order was released on January 25, 1994, adopted a filing window for the new Taylorville channel of March 11, 1994 through April 11, 1994. In reliance on the Report & Order, Miller began working on the preparation of its application. Specifically, Miller secured one potential tower site,

^{1/} The Petition was filed on December 22, 1994. Pursuant to Sections 1.4(h) and 1.45(a) of the Commission's Rules, this Opposition is timely filed.

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examined at least one or two other potential sites, and instructed its consulting engineer to begin preparing the FCC Form 301.

2. On February 25, 1994, the Commission released a Public Notice announcing that it was holding in abeyance the processing of applications and the adjudication of hearing proceedings involving mutually exclusive applications. FCC Freezes Comparative Proceedings, FCC 94-41, 9 FCC Rcd 1055 (1994) ("Freeze Order") The Freeze Order stated that any FM filing window "adopted prior to the imposition of this freeze will be suspended for the period of the freeze." Accordingly, the Freeze Order was applicable to the filing window adopted by the Report & Order for the new Taylorville FM station, thereby suspending the window for the duration of the freeze. In reliance on the Freeze Order, Miller ceased all work on its Taylorville application since the actual time for filing the application would not be established until some uncertain future time. At that point, Miller's application was about halfway completed.

3. On August 4, 1994, the Commission released a Public Notice modifying the Freeze Order by announcing that the filing windows which had been suspended by the Freeze Order "will be reopened for a full 30-day period by future Public Notice and by publication in the Federal Register." Modification of FCC Comparative Proceedings Freeze Policy, FCC 94-204, 9 FCC Rcd 6689 (1994). On November 23, 1994, the Commission released an Order, DA 94-1270, establishing a window period of January 6, 1995 through February 6, 1995, for filing applications for the new Taylorville FM station. In reliance on the November 23 Order, Miller has instructed its consulting engineer to

complete the FCC Form 301 application, and plans to file its application for Taylorville during the upcoming filing window.

4. Lakeside filed an application during the initial filing window, in violation of the Freeze Order. By letter dated December 15, 1994 (Reply Ref: 1800B-JRC), the Commission properly returned Lakeside's application noting that the application could be refiled during the applicable forthcoming window filing period. Lakeside's filing fee was to be returned under separate cover. Lakeside has lost nothing in the process.

5. Lakeside claims in its Petition that the Commission should rescind the November 23 Order establishing the new filing window and consider only those applications which were filed during the initial filing window suspended by the Freeze Order. This is an odd argument, considering Lakeside's own application has now been returned and there are no applications currently on file for the Commission to consider which were filed for Taylorville during the initial filing window. Lakeside bases its argument on the fact that the Freeze Order was not published in the Federal Register. However, Lakeside does not claim that it did not know about the Freeze Order and that it filed its application during the suspended filing window to its detriment. Lakeside had actual notice of the Freeze Order and, despite the clear language in the Freeze Order, Lakeside filed its application. Now, it seeks to exclude applicants which correctly followed, and relied upon, the instructions in the Freeze Order.

6. Miller respectfully submits that the new filing window established by the Commission's November 23, 1994 Order supersedes the initial filing window because the


November 23, 1994 Order has been published in the Federal Register at 59 Fed. Reg. 61327 (November 30, 1994).

CONCLUSION

For the foregoing reasons, Miller Communications, Inc. requests that the Commission deny Lakeside Broadcasting, Inc.'s Petition for Reconsideration.

Respectfully submitted,

MILLER COMMUNICATIONS, INC.

By 
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January 5, 1995

CERTIFICATE OF SERVICE

I, Susan A. Burk, a secretary with the law firm of Pepper & Corazzini, L.L.P., hereby certify that a true and correct copy of the foregoing "Opposition to Petition for Reconsideration" was served by U.S. mail, first-class, postage prepaid on the 5th day of January, 1995, on the following individuals:

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